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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/553,334	07/12/2006	Alfred Langerak	294-232 PCT/US	2080

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EXAMINER

ACKUN, JACOB K

ART UNIT	PAPER NUMBER
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3728

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09/10/2008

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No. 10/553,334	Applicant(s) LANGERAK, ALFRED	
	Examiner Jacob K. Ackun Jr.	Art Unit 3728	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 20 June 2008.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-13 and 15-25 is/are pending in the application.
- 4a) Of the above claim(s) 1-10 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 11-13 and 15-25 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☒ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|----------------------------------------------------------------------------------------|-------------------------------------------------------------------|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date <u>1/17/06</u> . | 6) <input type="checkbox"/> Other: _____ |

1. Claims 1-10 are withdrawn from further consideration pursuant to 37 CFR 1.142(b) as being drawn to a nonelected invention, there being no allowable generic or linking claim. Election was made **without** traverse in the reply filed on 6/20/08.

2. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

3. Claims 16-19 and 22-25 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. The claims are indefinite because they are drawn to a series of packages but are further limited with reference to features of a mold. It is not clear how the mold features are intended by applicant to further limit the series of packages.

4. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

6. Claims 11-13 and 15-25 are rejected under 35 U.S.C. 102(b or e) as anticipated by or, in the alternative, under 35 U.S.C. 103(a) as obvious over Kumakura et al (2006/0000738) or Kumakura et al in view of the applicant's own disclosure of the prior art. Kumakura et al is considered to clearly teach a package of the general type disclosed and claimed in the subject application having "slightly curved" parts at least adjacent the hinges thereof to facilitate free standing (note for example claim 11). The package also has "weakening means" (note for example claim 12) so that a sub package can be broken off from the original package and is "suitable as a take-away package" (whether before or after opening the package). As to the claims requiring a series of packages "mutually differing in form and/or suspension means and/or receiving means" the limitations are considered to be met by packages of the type taught in the reference since it teaches the packaging of commodities generally or various numbers of batteries. Different commodities or numbers of batteries would inherently result in packages having differing form or receiving means, for example. However, the applicant

also teaches that providing different packages is conventional (see the bottom of page 1 of the specification, for example). Thus, it would have been obvious in view of the applicants own disclosure to provide differing ones of the Kumakura packages, as claimed, for the purpose of providing for the packaging of different articles or numbers of articles in the package. Finally, it is noted that all of the claims could be considered to be product by process claims, based on recitations such as that on line 2 of claim 11 (integrally injection molded) or line 7 of claim 16 (manufactured with the aid of a mold). Per the applicable examining practice, the packages of Kumakura are considered to meet all of the product by process limitations in the claims, even if the specific process steps are not expressly taught in the reference. That is, based on the disclosure in the reference, the packages of Kumakura are presumed to be the packages recited by any process limitations in these claims. The burden is on the applicant to show that they are not, also per the applicable rules.

7. Claims 11-13 and 15-25 are rejected under 35 U.S.C. 102(b or e) as anticipated by or, in the alternative, under 35 U.S.C. 103(a) as obvious over Hauser et al (4415084), Paik (6871742) or Freehan Jr. (6276529), alone, or further in view of applicants own disclosure of the prior art. Hauser et al or Paik are considered to clearly teach "slightly curved" closing parts that facilitate packages of the type

under consideration being free standing. Freehan is considered to clearly teach "weakening means" that facilitate the breaking away of a sub-package. It would also have been obvious to provide each of the noted references with a missing element or feature (including one of the above noted features) for the purpose of improving the utility of the package. Applicants own disclosure of the prior art is applied as before. It would have been obvious in view of the applicants own disclosure to provide differing ones of the Hauser, Paik or Freehan packages, as claimed, for the purpose of providing for the packaging of different articles or numbers of articles in the package. Finally, the product-by-process limitations or claims are considered to be met by either Hauser, Paik or Freehan, since each is considered to recite the package encompassed by these limitations or claims, based on the teaching in each reference.

8. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jacob K. Ackun Jr. whose telephone number is (571)272-4418. The examiner can normally be reached on Monday through Friday 8.30AM-5.00PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Mickey Yu can be reached on (571)272-4562. The fax

phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Jacob K. Ackun Jr./
Primary Examiner, Art Unit 3728